SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 272

DETROIT INTERNATIONAL BRIDGE COMPANY, APPELLANT,

vs.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

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[fol. 1] **IN SUPREME COURT OF MICHIGAN**

No. 37654

DETROIT INTERNATIONAL BRIDGE COMPANY, Appellant,

v.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN, Appellee

CLAIM OF APPEAL TO THE SUPREME COURT FROM THE CORPORATION TAX APPEAL BOARD

Detroit International Bridge Company, petitioner, claims an appeal from the order and determination entered on November 22, 1933, by the Corporation Tax Appeal Board of the State of Michigan. Appellant takes an appeal in the nature of a petition for a writ of certiorari.

On December 19, 1933, the Supreme Court of the State of Michigan entered an order in the above matter extending the time within which said appellant could appeal and granting leave to said appellant to appeal from said order of the Corporation Tax Appeal Board.

This claim of appeal is filed together with a petition in the nature of a petition for writ of certiorari.

Detroit International Bridge Company, by Stevenson, Butzel, Eaman & Long, Its Attorneys. Business Address: 2288 First National Bank Building, Detroit, Michigan.

Dated Jan. 31, 1934.
21/EH.

[fol. 2] IN SUPREME COURT OF MICHIGAN

[Title omitted]

PETITION FOR WRIT OF CERTIORARI ATTACHED TO CLAIM OF APPEAL

To the Honorable Judges of the Supreme Court for the State of Michigan:

Your petitioner, Detroit International Bridge Company, the appellant, respectfully shows unto this Court as follows:

1. The Detroit International Bridge Company is a Michigan corporation, which was organized on June 21st, 1927. Upon incorporation in 1927, the Detroit International Bridge Company paid to the Secretary of State the franchise or organization fee required under the provisions of Act No. 85 of the Public Acts of 1921, Sections 3 and 3a, as amended by Act No. 33 of the Public Acts of 1927. The corporation's principal office at that time was designated, has since been and is now designated, as Detroit, Michigan.

2. The Articles of Incorporation of the appellant, Detroit International Bridge Company, were amended in May 1933, so that the only corporate power with which the cor-
[fol. 3] poration was vested, in accordance with such amended articles, was as follows:

Article II

"To operate the highway bridge, known as the Ambassador Bridge across the Detroit River, from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches and appurtenances thereto, and to own all or part of said bridge and approaches and appurtenances thereto.

"To maintain and operate said bridge and approaches and appurtenances thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

a certified copy of said amendment being attached hereto as part of the certified record of the Corporation Tax Appeal Board which is made a part hereof.

3. Since the filing of such amendment the Detroit International Bridge Company has had no corporate power, and since the filing of such amendment and theretofore the Detroit International Bridge Company has engaged in no other business than the operation of a highway bridge for vehicular and pedestrian traffic from Detroit, Michigan, to Sandwich, Ontario, Canada, charging tolls therefor, the entire bridge structure and appurtenances being used and operated by the petitioner, Detroit International Bridge Company, exclusively in foreign commerce.

4. Your petitioner further shows that permission and authority for the construction of said bridge was granted by

an Act of Congress of the United States of America, approved March 4th, 1921, entitled "An Act to Authorize the [fol. 4] Construction and Maintenance of a bridge across the Detroit River Within or near the City Limits of Detroit, Michigan," which act was adopted in accordance with the provisions of the Act of Congress entitled "An Act to Regulate the Construction of Bridges over Navigable Waters" approved March 23rd, 1906. Petitioner further shows that this act was amended and the time for the completion of the construction of this bridge was extended from time to time by Acts of Congress approved April 17th, 1924, March 3rd, 1925, and May 13th, 1926, your petitioner having by purchase acquired the rights and franchises of the American Transit Company, to which company these franchises for the construction of the bridge were originally granted.

Your petitioner further shows that the Canadian Transit Company, a subsidiary of your petitioner, which owns and operates the Canadian portion of the bridge structure, was granted permission and authority to construct the bridge on the Canadian side by an Act of Parliament of the Dominion of Canada, assented to May 3rd, 1921, and amended from time to time, having finally received approval of the Governor General of Canada on March 31st, 1927.

5. The Detroit International Bridge Company filed its annual report for 1933 on August 31st, 1933, and enclosed therewith a check for Two Dollars ($2.00) to cover the filing fee, with the statement that it was not liable for the payment of any annual privilege fee, since the Company then only had the power to engage in foreign commerce, and no other purpose whatsoever, and that it only did engage in such business and no other.

[fol. 5] 6. On October 26th, 1933, the Secretary of State of the State of Michigan determined that the appellant, Detroit International Bridge Company, was subject to an annual privilege tax for the year 1933 of Thirty-seven Hundred Sixty-three and 25/100 Dollars ($3763.25), plus the Two Dollars ($2.00) filing fee, a copy of said letter of determination being attached hereto as part of the certified record of the Corporation Tax Appeal Board.

7. The appellant, Detroit International Bridge Company, thereupon filed an appeal from the determination of the

Secretary of State to the Corporation Tax Appeal Board on November 3rd, 1933, and paid the requisite fee therefor, and under date of November 22nd, 1933, the Corporation Tax Appeal Board of the State of Michigan sustained the ruling of the Secretary of State and denied the appeal of your petitioner, Detroit International Bridge Company.

8. That attached hereto and made a part hereof as the record on appeal, are the following documents:

Certified copy of the Amendment to the Articles of Association of said appellant corporation, Detroit International Bridge Company, dated May 17th, 1933.

Certified record of the proceedings before the Secretary of State and the Corporation Tax Appeal Board, including the Annual Report of Detroit International Bridge Company for the year 1933.

Letter from the attorneys for the Detroit International Bridge Company to the Secretary of State, dated August 30th, 1933, enclosing and filing said Annual Report.

[fol. 6] Determination of the Secretary of State dated October 26th, 1933.

Communication from the attorneys for the Detroit International Bridge Company to the Secretary of State asking for a possible correction of a statement contained in said letter of October 26th, 1933, by the Secretary of State.

Letter dated November 13, 1933, from the Secretary of State to said counsel making such correction.

Notice of appeal to the Corporation Tax Appeal Board, dated November 3rd, 1933.

Notice of hearing before the Corporation Tax Appeal Board dated November 8th, 1933.

Determination of the Corporation Tax Appeal Board dated November 22nd, 1933.

9. The appellant, Detroit International Bridge Company, respectfully shows that it was aggrieved by the determination of the Secretary of State and the Corporation Tax Appeal Board, and submits that said determination of the privilege fee for the year 1933 is erroneous and illegal and without warrant, and not in accord with the law and facts here controlling, in the following particulars:

(1) The attempt of the State of Michigan to impose an annual privilege tax under Act No. 327 of the Public Acts of 1931, upon appellant, Detroit International Bridge Com-

pany, would violate Article I, Section 8, Clause 3, of the Constitution of the United States, since the only power with which Detroit International Bridge Company is vested [fol. 7] under its Articles of Incorporation as amended, and the only business in which it engages and has ever engaged, is the operation of an international highway bridge for vehicular and pedestrian traffic from Detroit, Michigan, to Sandwich, Ontario, Canada.

It is respectfully submitted by the appellant that because the powers of appellant corporation were limited under its corporate charter as amended, and because pursuant thereto it could and did engage only in the carrying on of its business of foreign commerce, that it would violate the commerce clause of the Federal Constitution for the State of Michigan to attempt to impose said annual privilege tax upon it for the privilege of exercising its corporate franchise, when its corporate franchise, if exercised completely, would only permit it to engage exclusively in foreign commerce. It is the claim of the Detroit International Bridge Company that it is not subject to the payment of the annual privilege tax in any amount, and is only required to file its annual report and pay the filing fee therefor.

(2) That even if the Detroit International Bridge Company, appellant, were subject to the payment of the 1933 privilege fee, the value of the bridge structure and the appurtenances thereto listed as capital assets, item No. 8 in the annual report, in the amount of $8,302,699.54, should be excluded from the computation of said fee as property used exclusively in foreign commerce under the express provisions of Act No. 327 of the Public Acts of 1931.

[fol. 8] Wherefore your petitioner prays that this Court reverse the order of said Corporation Tax Appeal Board and the determination of the Secretary of State, and issue a writ in the nature of a writ of certiorari under the seal of this Court directed to the Corporation Tax Appeal Board and to Patrick H. O'Brien, Attorney General, and to John K. Stack, Jr., Auditor General, and to Theodore I. Fry, State Treasurer, constituting the Tax Appeal Board of the State of Michigan, to review and reverse the order of said Corporation Tax Appeal Board, and of said Secretary of State, and that all proceedings under said order of the Corporation Tax Appeal Board and said determination of the

Secretary of State in the computation of the 1933 privilege fee of the appellant and petitioner be thereby stayed in accordance with law until final decision is made in this case.

Stevenson, Butzel, Eaman & Long, Victor W. Klein, Attorneys for Detroit International Bridge Company.

Duly sworn to by Victor W. Klein. Jurat omitted in printing.

[fol. 9] Certificate of Secretary of State

United States of America

(Insignia)

The State of Michigan, Department of State

To all to whom these presents shall come:

I, Frank D. Fitzgerald, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that the annexed copy of amendment to the articles of association of the Detroit International Bridge Company, annual report of the company for the year 1933, correspondence relating thereto, and opinion of the Corporation Tax Appeal Board has been compared by me with the record on file in this Department and that the same is a true copy thereof, and the whole of such record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this Twelfth day of December, A. D. 1933.

Frank D. Fitzgerald, Secretary of State. (Seal of the State of Michigan.)

[fol. 10] Certificate of Amendment to the Articles of Incorporation of Detroit International Bridge Company

P. O. Address—Twenty-first and Howard Streets, Detroit, Michigan

We, the undersigned, being the President and Assistant Secretary, of the Detroit International Bridge Company, a corporation existing under the provisions of Act 327 of the Public Acts of 1931, do hereby certify, as required by said act:

That at a meeting of the stockholders of said corporation called for the purpose of amending its articles of incorporation and held at the office of the company on the 3rd day of May, A. D., 1933, it was resolved, by a majority vote of the stockholders or members of said corporation, that Article No. III of the articles of incorporation be and the same is amended so as to read in its entirety as follows, viz:

Article III

The purpose or purposes of this corporation are as follows:

To operate the highway bridge, known as the Ambassador Bridge, across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches and appurtenances thereto, and to own all or part of said bridge and approaches and appurtenances thereto.

To maintain and operate said bridge and approaches and appurtenances thereto for the use of vehicular and pedes- [fol. 11] trian traffic, and to charge and collect tolls for such use.

In witness whereof, we hereunto sign our names this seventeenth day of May, A. D., 1933.

Detroit International Bridge Company (Corporate Name), by J. A. Bower, President, F. M. Radford, Assistant Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this Seventeenth day of May, 1933, before me a Notary Public in and for said County, appeared J. A. Bower, President, and F. M. Radford, Asst. Secy. of the Detroit International Bridge Company, known to me to be the person named in, and who executed the foregoing instrument, and acknowledged that he executed the same freely and for the intents and purposes therein mentioned.

Edgar A. Hansen, Notary Public, Queens County. Certificate filed in New York County, N. Y. Certificate filed in Kings County, N. Y. Queens County No. 2146 Registers No. 6033. N. Y. County No. 709 Registers No. 5-H-439. Kings County No. 55 Registers No. 5223. My commission expires March 30, 1935. (Seal.)

[fol. 12] Take notice—It is required by statute that two originals of this report be forwarded to the Secretary of State. Please note instruction page before proceeding.

August 31st is the last day for filing reports without penalty.

Michigan Annual Report

To be filed by every corporation for profit, whether domestic or foreign.

(Name of Corporation:) Detroit International Bridge Company.

(Postoffice Address:) Detroit, Michigan.

(Street and No.:) 1227 21st Street.

Frank D. Fitzgerald, Secretary of State, Lansing, Michigan.

Sir: In accordance with the provisions of Act No. 327, Public Acts of 1931, the undersigned officers of the above named company submit the following report of its condition on the 31st day of December, 1932 (Do not change this date) or (Date) —— (close of fiscal year next preceding the time for filing) or the date of incorporation during this year.

1. The place or places at which the corporation has been engaged in business during the year is (are) Detroit, Michigan.

2. Where incorporated (State): Michigan.
Date of Incorporation: June 21, 1927 (Michigan).
Date admitted: (Foreign) ——.

3. The following are the officers and directors of the corporation:

Names of officers	Postoffice addresses
Joseph A. Bower, President	165 Broadway, New York, N. Y.
Alfred C. Dent, Vice-President	100 Broadway, New York, N. Y.
Sherman D. Callender, Secretary-Treasurer	1706 Dime Bank Bldg., Detroit, Mich.
F. M. Radford, Ass't Secretary	165 Broadway, New York, N. Y.
F. M. Radford, Ass't Treasurer	165 Broadway, New York, N. Y.

Names of directors	Postoffice addresses
[fol. 13] Joseph A. Bower,	165 Broadway, New York, N. Y.
Harry M. Bawden	26 King St., East, Toronto, Ont.

Sherman D. Callender.....
1706 Dime Bank Bldg., Detroit, Mich.
Alfred A. Cook.....20 Pine Street, New York, N. Y.
John E. McAllister....68 King Street, East Toronto, Ont.
Jansen Noyes.....37 Wall Street, New York, N. Y.

4. Capital stock:

	Authorized	Issued	Stock subscribed but not issued	Par value per share
Common.....	$.....	$.....	$.....	$.....
Preferred.....	$5,000,000.00	$1,600,000.00	$.....	$100.00
Amount.....	$.....	$.....	$.....	$.....
Common Non-Par.....	100,000 shares	100,000 shares	...shares	.....

5. The following is a true statement of the assets and liabilities from the books and records of the corporation, showing the condition at the date stated, and segregated to show for the purpose of computing this tax, the nature, location and value of all property owned by the corporation both in and without Michigan, itemized as follows:

Assets	Amount	In Michigan	Without Michigan
1. Cash.....	.....	$102,702.27	$45,241.23
2. Notes and Accounts Receivable.....	$4,216.37	.....	.....
Less reserve for bad debts....	357.50	3,558.19	300.68
3. Deferred payments notes, contracts, etc.....	.....	.....	.....
*Less reserve for deferred profits.....	.....	.....	.....
4. Inventories: (To include raw materials, work in process, finished goods, supplies, etc.).....	.....	.....	.....
5. Investments.....	.....	2,585,007.97	.....
7. Deferred charges:			
Prepaid insurance.....	.....	12,310.04	7,470.87
Prepaid taxes.....	.....	*77,343.63	.....
[fol. 14]			
8. Capital assets:			
Land.....	.....	1,948,927.29	.....
Buildings.....	$6,785,968.67	.....	.....
Machinery and equipment.	.....	.....	.....
Furniture and fixtures.....	15,489.84	.....	.....
Delivery equipment.....	24,079.63	.....	.....
Franchise Rights, etc.....	1,840,077.54	.....	.....
Total.....	$8,665,615.68	.....	.....
Less reserve for depreciation and depletion....	362,916.14	8,302,699.54	.....
9. Patents (To include copyrights, trade-marks, etc.)..	.....	.....	.....
10. Good-will.....	.....	.....	.....
11. Other Assets (describe fully): Unamortized Disct. and and Expense on Funded Debt.....	.....	.....	*921,917.17

Assets	Amount	In Michigan	Without Michigan
Prepaid Easements and Rentals		223,705.28	
12. Total Assets		$13,256,254.21	$974,929.95
6. Liabilities.			
13. Notes and Accounts Payable.		5,516.48	1,086.32
14. Accrued expenses—Taxes, etc.		317,863.94	
Accrued Interest		2,099,462.95	746,129.55
15. Other Liabilities (describe fully)			
6½% First Mortgage Bonds..	$5,989,000.00		
7% S. F. Gold Debentures....	8,000,000.00		
		13,989,000.00	
16. Capital Stock:			
Preferred stock (less stock in treasury)	1,405,300.00		
Common stock (less stock in treasury)			
Non-par stock (No. of shares 100,000)	100,000.00	1,505,300.00	
17. Schedule of surplus and undivided profit (Enter deficit in red)			
Earned		4,433,175.08	
Appreciation of value			
Paid-in arising from			
Total Liabilities		$13,483,968.29	$747,215.87

[fol. 15] 7. The aggregate amount of any loans, advances, overdrafts and/or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business and on the ordinary and usual terms of payment and security. $—.

8. Property exclusively used in interstate commerce. Capital Assets enumerated in Items 5 and 8, Michigan and Canada, and the Furniture and Fixtures and delivery equipment used exclusively in connection therewith. (This applies to railway equipment, tank cars, steamboats, etc., when so used in interstate commerce.)* $10,251,626.83.

9. The amount of capital stock paid in (a) in cash See rider attached, (b) in property:—

(Good-will, patents, formulas, etc., or any intangible for which stock has been issued, are considered property.)

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* For record purposes only. This is a book value—showing original cost and neither represents reproduction costs, present costs, nor market value which is lower. These are bookkeeping items and do not represent assets which should enter into the computation of the tax.

No par value stock: Book value per share—See rider attached; Price fixed by corporation for sale of ——.

10. The nature and kind of the business in which the corporation has been engaged during the year: Operation of a toll bridge between Detroit, Mich. and Sandwich, Ontario.

The foregoing is a true statement of the condition of the corporation as of Dec. 31, 1932, or —— (close of fiscal year) or the date of incorporation during this year.

Witness our signatures.

Joseph A. Bower, President, and F. M. Radford, Asst. Secretary, or —— ——, Asst. Treasurer. (Corporate Seal.)

[fol. 16] State of New York,
County of New York, ss:

I, J. A. Bower, do solemnly swear that I am the president or vice-president, or secretary or assistant secretary, or treasurer, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of my knowledge and belief.

Joseph A. Bower, Official Signature.

Subscribed and sworn to before me, this 23rd day of August, 1933. E. C. Williams, Notary Public, New York County. New York Co. Clerk's No. 228, Register's No. 4-W-291. Kings Co. Clerk's No. 168, Register's No. 4234. My commission expires: Commission expires March 30, 1934. (Seal.)

Answer to Question No. 9

The original capitalization of the Company was 1,000 shares with no par value, for the sale of which a price of $1.00 per share was fixed; subsequently, the authorized capital stock was increased to 100,000 shares of common stock without par value and 50,000 shares of preferred stock having a par value of $100 a share. An additional 99,000 common shares, and 11,000 preferred shares, were issued as set forth in an affidavit filed with the Secretary of State at the time, a copy of which affidavit, to which reference is hereby made, was attached to our annual report for the year 1929. In addition to the foregoing, 5,000 shares of preferred stock were issued in 1930 for property.

[fol. 17] This annual report is filed pursuant to the Corporation Laws of the State of Michigan. It is the contention of the Detroit International Bridge Company, however, that it is not subject to the payment of the Annual Privilege Fee. Under its Articles of Association, as amended, the only power the corporation has is to engage in this carrying on of foreign commerce. The corporation has no power whatsoever under its articles of association to do a local business at all. It is, therefore, the position of the Detroit International Bridge Company that it is not subject to the payment of the annual privilege tax imposed by the laws of the State of Michigan. For the State of Michigan to attempt to impose an annual privilege tax upon the Detroit International Bridge Company for the privilege of doing business, when the only power it has is to engage exclusively in foreign commerce (this being the only business it does engage in), the corporation having no power to engage in local business at all, would be to contravene and violate Article 1, Section 8, Clause 3, of the Constitution of the United States.

Under the Articles of Association as amended the only power the corporation has is

"To operate the highway bridge, known as the Ambassador Bridge across the Detroit River, from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches and appurtenances thereto, and to own all or part of said bridge and approaches and appurtenances thereto.

"To maintain and operate said bridge and approaches and appurtenances thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

[fol. 18] Stevenson, Butzel, Eaman & Long, First National Bank Building, Detroit

August 30th, 1933.

Secretary of State, Lansing, Michigan.

Re Detroit International Bridge Company

DEAR SIR: We enclose herewith in duplicate executed annual report for the year 1933 of our client, Detroit Inter-

national Bridge Company, a Michigan corporation, together with their check in the amount of $2.00 to cover the filing fee.

You will undoubtedly recall that after our litigation in the United States Supreme Court last year, Detroit International Bridge Company amended its articles of association in May of 1933, so as to read as follows:

To operate the highway bridge, known as the Ambassador Bridge across the Detroit River, from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches and appurtenances thereto, and to own all or part of said bridge and approaches and appurtenances thereto.

To maintain and operate said bridge and approaches and appurtenances thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use.

Under its articles of association as amended, it is now undisputable that the only power that the corporation has [fol. 19] is to engage in this carrying on of foreign commerce. The corporation has no power whatsoever under its articles of association to do a local business at all. It is, therefore, the position of the Detroit International Bridge Company that it is not subject to the payment of the annual privilege tax imposed by the laws of the State of Michigan. For the State of Michigan to attempt to impose an annual privilege tax upon the Detroit International Bridge Company for the privilege of doing business, when the only power it has is to engage exclusively in foreign commerce (this being the only business it does engage in), the corporation having no power to engage in local business at all, would be to contravene and violate Article 1, Section 8, Clause 3, of the Constitution of the United States.

May we ask that you file this report and advise us accordingly.

Your very truly, Stevenson, Butzel, Eaman & Long.

21/IMP.

(Encs.)

[fol. 20] Determination of 1933 Privilege Fee by Secretary of State

S:IS Corporation

Oct. 26, 1933.

Stevenson, Butzel, Eaman & Long, Attorneys, First National Bank Bldg., Detroit, Michigan.

Re Detroit International Bridge Co.

GENTLEMEN: We have your letter of August 30 enclosing the 1933 annual report of the above corporation with remittance of $2.00.

The fee payable on paid-up capital at the rate of 2½ mills on the dollar results in $3,765.25 including the $2.00 filing fee. Their remittance leaves a balance due of $3,763.25.

The amendment filed would not affect the 1933 report inasmuch as the statement in the report is as of December 31, 1932 and the amendment shows the date of meeting and filing in May of 1933.

Respectfully, —— ——, Secretary of State.

[fol. 21] Stevenson, Butzel, Eaman & Long, First National Bank Building, Detroit

October 30th, 1933.

Mr. Frank D. Fitzgerald, Secretary of State, Lansing, Michigan.

Attention of Corporation Division

S:IS

Re Detroit International Bridge Company

DEAR SIR: This is to acknowledge receipt of your communication of October 26th in reference to the 1933 Annual Report of the Detroit International Bridge Company in which you state that the tax should be $3,763.25.

At the close of your letter, however, the following appears:

"The amendment filed would not affect the 1933 report inasmuch as the statement in the report is as of December 31, 1932, and the amendment shows the date of meeting and filing in May of 1933."

In view of the case of In re Johnston-Newton Company, 226 Mich. 40, and other Michigan cases which have since followed that ruling, the privilege tax is paid in advance for the year commencing as of August 31st. The reference to the December 31st condition is only as to the financial condition of the Company and has no reference whatever as to the powers with which a corporation is vested and has no bearing upon the privileges for which the fee [fol. 22] is being paid. As we understand the rulings of the courts on this law, the Michigan privilege tax is for the privilege of exercising the corporate franchises from August 31st, 1933, to August 31st, 1934. On August 31st, 1933, the amendment of the Detroit International Bridge Company had been filed and it had no corporate power to do anything but to operate an international bridge company. If it were charged any privilege fee from August 1933 to August 1934, it would be for the privilege of exercising this corporate power, to wit, operating an international highway bridge company, which we submit would be an unconstitutional interference in regulation of foreign commerce.

In view of this situation as to the time when the filing of the amendment becomes effective, does not your office now concur in the acceptance of the report as filed? Your prompt advice would be appreciated.

Yours very truly, Stevenson, Butzel, Eaman & Long.

21/IMP.

[fol. 23] Notice of Appeal to Corporation Tax Appeal Board

November 3, 1933.

Hon. Patrick H. O'Brien, Attorney General, State of Michigan, Chairman of Tax Appeal Board; Hon. John K. Stack, Jr., Auditor General; Hon. Theodore I. Fry, State Treasurer, Constituting the Tax Appeal Board of the State of Michigan.

To the said Tax Appeal Board:

Re Detroit International Bridge Company 1933 Privilege Tax

A communication dated October 26, 1933, from Frank D. Fitzgerald, Secretary of State, was received by us as at-

torneys for the Detroit International Bridge Company on October 28, 1933, in which there is determined the amount of the privilege fee said to be due from the Detroit International Bridge Company on its 1933 report, in the amount of $3,765.25.

This communication constitutes the notice of the Detroit International Bridge Company to the Tax Appeal Board that the Detroit International Bridge Company conceives itself aggrieved as to the amount of such fee based upon the facts and desires a determination thereof by the Tax Appeal Board in the manner provided by the laws of the State of Michigan.

We are enclosing herewith our check in your favor in the amount of $10.00 as payment of the statutory appeal fee, we desire a hearing in this case at which hearing this office will represent the Detroit International Bridge Company.

[fol. 24] May we ask that you acknowledge receipt of this letter, sending us a receipt for the statutory fee and advising at what time you wish to have the hearing set for.

Yours very truly, Stevenson, Butzel, Eaman & Long,
Attorneys for Detroit International Bridge Company.

21/EH.

'Encl.'

AEA:IE.
Corporation.

Stevenson, Butzel, Eaman & Long, Attys., First National Bank Building, Detroit, Michigan.

In re Detroit International Bridge Company, 1933
Privilege Tax

GENTLEMEN: Acknowledging your letter of November 3, relative to the appeal of the above corporation, permit us to advise the hearing has been set for two o'clock, Tuesday, November 14, we believe the Attorney General's Office so notified you.

We are enclosing official receipt for the appeal fee.

Will you kindly have a representative present?

Respectfully, —— ——, Attorney, Corporation Division.

Enc.

[fol. 25] AEA:MM.
Corporation.

November 13, 1933.

Stevenson, Butzel, Eaman & Long, Attys., First National Bank Building, Detroit, Mich.

Attn. Mr. V. W. Klein

Re Detroit International Bridge Company

GENTLEMEN: Confirming our conversation by telephone this morning, you may disregard the third paragraph in our letter of October 26, inasmuch as the question involved in the amendment is apart from any change in the financial condition of the company which would be the only one effected by an amendment subsequent to January 1.

However, your letter of August 30, in which you enclose the annual report together with a filing fee of $2.00, carries the statement:

"Under its articles of association as amended, it is now undisputable that the only power that the corporation has is to engage in this carrying on of foreign commerce. The corporation has no power whatsoever under its articles of association to do a local business at all. It is, therefore, the position of the Detroit International Bridge Company that it is not subject to the payment of the annual privilege tax imposed by the laws of the State of Michigan. * * *"

To the above statements we take exceptions. This same question, that of exemption of the Bridge Company, due to [fol. 26] the nature of its business, that of foreign commerce, was argued before our State Supreme Court and your claim disallowed. In your petition for rehearing you again stressed this question and specifically asked the court to make a ruling upon this particular point. The court refused to grant you a rehearing thus evidencing the fact it had passed upon this question in its original decision. It thereby confirmed the State's contention that the Bridge Company was liable for the tax and that it was not engaged in foreign commerce.

The fact that a corporation is engaged in foreign commerce does not exempt it from the payment of the privilege tax under the provisions of the statute, Act 85, Public Acts of 1921, as amended. This point has been definitely settled

by our Michigan Supreme Court not only in its decision in re:

Detroit International Bridge Company, 257 Mich. 52 but likewise in:

Detroit & Windsor Ferry Co., vs. the State, 232 Mich. 574.

Very truly yours, —— ——, Secretary of State.

[fol. 27] State of Michigan

BEFORE THE CORPORATION TAX APPEAL BOARD

In re Appeal of DETROIT INTERNATIONAL BRIDGE COMPANY

DETERMINATION OF CORPORATION TAX APPEAL BOARD

At an adjourned meeting of the Corporation Tax Appeal Board, held at the office of the Attorney General, November 21, 1933, at 3 o'clock, P. M., the appeal of the Detroit International Bridge Company was considered.

After giving full consideration to the certified record of the Secretary of State covering the Bridge Company's annual report for the year 1933, together with its amended Articles of Incorporation, it is the opinion of this Board that the Secretary of State is correct in assuming the Bridge Corporation liable for the 1933 privilege tax due in accordance with Section 4 of Act 85, Public Acts of 1921, as amended; and further in refusing to acknowledge said Bridge Company's exemption of certain capital assets aggregating $8,302,699.54, due to exclusive use in foreign commerce.

We hereby certify to the Secretary of State the following computation of the privilege fee for the year 1933.

[fol. 28] Paid-up capital $1,505,300.00 @ 2½ mills—$3,763.25.

Total privilege fee.

Patrick H. O'Brien, Attorney General, Chairman; John K. Stack, Jr., Auditor General, Theodore I. Fry, State Treasurer.

Dated this 22nd day of November, 1933.

Certificate of Secretary of State

1. Article III of Articles of Association of Detroit International Bridge Co., appearing in original articles, June 21, 1927.

2. Amendment to Article III, filed August 5, 1927.

United States of America

The State of Michigan, Department of State

To all to whom these present shall come:

I, Frank D. Fitzgerald, Secretary of State of the State of Michigan and Custodian of the Great Seal thereof, Do Hereby Certify that the annexed copy of Article III of the articles of association of the Detroit International Bridge Company and Article III of amendment to the articles of association of said company has been compared by me with [fol. 29] the record on file in this Department and that the same is a true copy thereof, and the whole of such record.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State at the Capitol, in the City of Lansing, this Twenty-eighth day of February, A. D. 1934.

Frank D. Fitzgerald, Secretary of State. (Great Seal of the State of Michigan.)

Article III Appearing in Articles of Association of Detroit International Bridge Company—Filed June 21, 1927

Article III

The purpose or purposes of this corporation are as follows:

Constructing, owning and/or operating a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada.

Amendment to Article III of the Articles of Association of the Detroit International Bridge Company, Filed August 5, 1927

Article III

The purpose or purposes of this corporation are as follows:

[fol. 30] To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada and the approaches thereto.

To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use.

In furtherance and not in limitation of the general powers conferred by the laws of the State of Michigan and of the objects and purposes hereinbefore stated, it is hereby expressly provided that this corporation shall also have the following powers, that is to say:

To acquire by purchase, exchange, lease or otherwise, and to own, hold, erect, construct, operate, maintain, make, alter, enlarge and improve, and to aid or subscribe to the construction, acquisition or improvement of, convey, mortgage, sell, lease or otherwise dispose of, any and all real and personal property of every kind, corporeal and incorporeal, rights and privileges and any and all interests therein, necessary or incidental to or connected with any of the purposes of the corporation; and to perform any and all such acts either alone or jointly, or jointly and severally, with any other corporation or corporations, association or associations, domestic or foreign, or any firm or individual;

To take over the property, rights and privileges of any person, firm, association or corporation appropriate or required for the purposes of this corporation in whole or in part by purchase thereof or by acquisition of the capital stock of any such corporation or in any other manner; to pay for the same in cash or the stock, bonds, debentures, notes or obligations of this corporation or otherwise; to as-[fol. 31] sume the whole or any part of the contracts, leases or other obligations of such corporation, or to take over such property subject to any such liabilities;

To purchase, redeem or otherwise acquire, and to hold, sell or otherwise dispose of, its own shares of stock (in so far as may be permitted by law) and its bonds, debentures, notes or other evidences of indebtedness;

To borrow money, either alone or jointly, or jointly and severally, with any other corporation or corporations, association or associations, domestic or foreign, or any firm or individual, to make, draw, accept, issue, endorse, negotiate and guarantee promissory notes, bills of exchange, bonds, debentures, warrants and other obligations and evi-

dences of indebtedness, whether secured, by mortgage, pledge or otherwise or unsecured, for money borrowed or in payment for property purchased or acquired or for any other lawful object; to mortgage or pledge any or all of its properties, rights, privileges and interests, including any shares of stock, bonds, debentures, notes or other obligations or evidences, of indebtedness at any time owned or subject to disposition by it, and any such mortgage or pledge may be created by this corporation alone or jointly, or jointly and severally, with any other corporation or corporations, association or associations, domestic or foreign, or any firm or individual;

To acquire by purchase, subscription or otherwise, and to own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of shares of stock, bonds, debentures, notes, scrip, securities, obligations, evidences of indebtedness or contracts of any corporation or corpora- [fol. 32] tions, association or associations, domestic or foreign, or any firm or individual or the United States or the Dominion of Canada or any state, territory or colony of the United States or any province of the Dominion of Canada or any other foreign country or any municipality or local authority within or without the United States or the Dominion of Canada, and also to issue in exchange therefor stocks, bonds, debentures, obligations or other evidences of indebtedness of this corporation, and while the owner or holder of any such shares of stock, bonds, debentures, notes, scrip, securities, obligations, evidences of indebtedness or contracts, to receive, collect and dispose of the dividends, interest and income thereon or therefrom, and to possess and exercise in respect thereto all of the rights, powers, and privileges of ownership, including all voting powers thereon;

To guarantee the payment of dividends upon any capital stock, and to become surety in respect of, endorse or otherwise guarantee the principal or interest or both of any bonds, debentures, notes, scrip or other obligations or evidences of indebtedness, or the performance of any contract, lease or obligation, of any corporation or corporations, association or associations, domestic or foreign, or any firm or individual, in which this corporation may have a lawful interest, or any shares of stock of which or any bonds, debentures, notes, obligations, evidences of indebtedness or contracts of which or whom are held by or for this corpor-

ation, or whenever such acts are calculated to promote the welfare of this corporation or to maintain, extend or enlarge its business or to protect its interests, in so far as and to the extent that such action may be permitted by law; [fol. 33] To aid in any manner any corporation or corporations, association or associations, domestic or foreign, or any firm or individual, any shares of which or any bonds, debentures, notes, obligations, evidences of indebtedness or contracts of which or of whom are held by or for or in any manner guaranteed by this corporation or in the welfare of which or of whom this corporation shall have any interest, and to do any acts, designed to protect, preserve, improve or enhance the value of any property at any time held by this corporation or in which it may at any time have an interest.

To do every other act or acts, thing or things incidental or appurtenant to or growing out of or connected with said purposes, objects and powers, provided the same be not inconsistent with the laws under which this corporation is organized.

This corporation may maintain offices or agencies, conduct its business or any part thereof, purchase, lease or otherwise acquire, hold, mortgage, convey and assign real or personal property, and do all or any of the acts herein set forth, outside of the State of Michigan as well as within said State.

[fol. 34] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO APPEAL—Dec. 19, 1933

In this cause a motion is filed by appellant for an extension of time within which to appeal from an order of the Corporation Tax Appeal Board, and nothing in opposition thereto having been filed by appellee, and due consideration thereof having been had by the Court, It is ordered that the motion be and the same is hereby granted, and that the [fol. 35] appeal of said appellant from said order of the Corporation Tax Appeal Board be and the same is hereby allowed.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 36] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER GRANTING LEAVE TO APPEAL—Feb. 20, 1934

In this cause an application is filed by appellant for leave to appeal from an order of the Corporation Tax Appeal Board, and a brief in opposition thereto having been filed by appellee, and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby granted.

[fols. 37-41] Clerk's certificate to foregoing paper omitted in printing.

[fol. 42] IN SUPREME COURT OF MICHIGAN

DETROIT INTERNATIONAL BRIDGE COMPANY, Appellant,

v.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN, Appellee

Before the Entire Bench

OPINION—Filed June 4, 1934

FEAD, J.:

Plaintiff, a Michigan corporation, appeals from assessment, for 1933, of the fee imposed under C. L. 1929, §§ 10140, 10143, on every corporation organized or doing business under the laws the state—

"for the privilege of exercising its franchise and of transacting its business within this state."

The fee is payable for the privilege of exercising the corporate franchise whether it is exercised or not. In com-

puting the fee, "none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce" enters into the computation.

In a former case, involving the fees for 1929 and 1930, plaintiff was held liable, In re Detroit International Bridge Company, 257 Mich. 52, affirmed in Detroit International Bridge Co. v. Corporation Tax Appeal Board, 287 U. S. 295. The Supreme Court of the United States refused to pass upon the contention that the fee violated the commerce clause of the Federal Constitution because plaintiff had not established that it had no power to carry on any business [fol. 43] not within the protection of the commerce clause.

Thereupon, in 1933, plaintiff amended its charter to read:

"Article III

"The purpose or purposes of this corporation are as follows:

"To operate the highway bridge, known as the Ambassador Bridge, across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches and appurtenances thereto, and to own all or part of said bridge, and approaches and appurtenances thereto.

"To maintain and operate said bridge and approaches and appurtenances thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

Plaintiff now claims that, under its charter, it can do no intrastate business, its only corporate power is to operate the bridge, such operation is foreign commerce and, therefore, the privilege fee is a burden upon such commerce and contravenes the Federal Constitution.

We need not inquire whether plaintiff has any intrastate power under statutes regulating domestic corporations. Nor whether maintenance of the bridge is local business. Nor need the multitude of cases dealing with taxation and regulation of interstate and foreign commerce be analyzed or distinguished. In plaintiff's former case and In re Detroit & Windsor Ferry Company, 232 Mich. 574, where this court held that the fee is not a direct burden on foreign commerce, the fact that the corporations had local

powers was not given weight. These cases are determinative upon plaintiff's liability for the fee.

However, in determining the amount of the fee, the question whether the operation of the bridge is foreign commerce is presented because of the statutory exclusion from the computation of property used exclusively in interstate commerce. In this connection, "interstate commerce" includes foreign commerce. In re Detroit & Windsor Ferry Company, supra.

[fol. 44] There can be no doubt that the bridge, if operated by a carrier, would be an instrumentality of foreign commerce. But the question under the statute is whether it is used in such commerce by plaintiff.

Plaintiff conveys no persons or goods across the bridge or international boundary line. It merely collects tolls from such pedestrians or vehicles as use it. It provides an instrumentality which others may use in conducting foreign business.

Plaintiff cites Covington & Cincinnati Bridge Company v. Kentucky, 154 U. S. 204 as controlling. There, a state law fixing tolls on an interstate bridge was held invalid as a regulation of interstate commerce. The court said, italics ours:

"With reference to the second question, an attempt is made to distinguish a bridge from a ferry boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. Commerce was defined in Gibbons v. Ogden, 9 Wheat. 1, 189, to be 'intercourse,' *and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool.* While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river. *A tax laid upon those who do the business of common carriers* upon a certain bridge is as much a tax upon the commerce of that bridge as if the owner of the bridge were himself a common carrier."

It will be noted that the tolls constituted a direct burden upon the people who used the bridge in interstate commerce.

Defendant relies on Henderson Bridge Company v. Kentucky, 166 U. S. 150. This case has particular significance because of a vigorous dissenting opinion by four justices. In both opinions the Covington Bridge case was cited. The state imposed a tax upon the value of the franchise of a domestic corporation operating a railroad bridge. The minority held it was a franchise tax upon all the business of the bridge company and that its business was interstate commerce. They said:

[fol. 45] "The contention that although the traffic over the bridge may be interstate commerce and the receipts from said traffic be interstate commerce receipts, yet the tolls paid to the bridge company are not receipts from interstate commerce business transacted by the bridge company, is a mere distinction without a difference. What, may I again ask, is the toll paid to the company for the use of the bridge but the result of a contract entered into for the purpose of carrying on interstate commerce? In the *Covington Bridge Case* the sole question was as to the right of the State of Kentucky to regulate the amount of tolls to be received by the bridge company. The right of the State was denied on the ground that the tolls were a matter of interstate commerce, that is, that the business of operating the bridge and charging for the use thereof was interstate commerce and not subject to state control. In that case then, the tolls were adjudged to be receipts from interstate commerce; in the case at bar, they are declared not so to be. The far-reaching consequence of this asserted distinction is well calculated to arouse solicitude for the future."

The majority of the court held the tax was upon the franchise as intangible property and was not a burden upon interstate commerce because the bridge company was not engaged in interstate commerce. The reasons given for the ruling are not dicta, as suggested by plaintiff, although the ruling could have been sustained on other grounds. The court said:

"Clearly the tax was not a tax on the interstate business carried on over or by means of the bridge, because the

bridge company did not transact such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received, and therefore might be supposed to increase the rate of tolls, is too remote and incidental to make it a tax on the business transacted."

In Arkansas, Etc. Terminal Co. v. State, 174 Ark. 420, certiorari denied 275 U. S. 548, the tax was imposed on a foreign corporation, authorized to do business in Arkansas, for the "right or privilege of doing business in the state." Its sole business was to maintain, own and operate an interstate bridge. It leased the bridge to three interstate carriers which owned all the capital stock of the bridge company and paid as rental for the use of the bridge only such sum as was necessary to take care of maintenance, taxes and other fixed charges. The court held the bridge company, by leasing, maintaining and keeping the bridge and its approaches repaired and employing labor and [fol. 46] capital in the state, was doing business in the state, that maintenance of the bridge was not interstate commerce, and said:

"Appellant's next contention is that, if engaged in business in Arkansas, it is engaged solely in interstate commerce or solely in the maintenance, ownership and operation of an instrumentality of such commerce. According to the stipulation and agreements in this case, the bridge company is not only not engaged in interstate commerce, but it is not engaged in any kind of commerce. It does not operate the bridge and does not carry either passengers or goods. In fact, it does nothing in the way of commerce, either intrastate or interstate. It owns, leases, repairs and maintains the bridge across the Mississippi River, and, while the bridge may be an instrumentality of interstate commerce so far as the carriers are concerned, the bridge company has nothing whatever to do with carrying either freight or passengers, and therefore does not use the bridge as an instrumentality for interstate commerce or any other kind of commerce."

In that case, as usual, the court reasoned from the facts before it. It did not intimate that if the bridge company

had operated the bridge the result would have been different.

In our opinion, the fact that plaintiff carries no persons or goods across the international line is determinative that it is not engaged in foreign commerce and its property is not so used by it. We so read the authorities above cited.

Affirmed.

(Signed) Louis H. Fead. William W. Potter. Nelson Sharpe. Walter H. North. Howard Wiest. George E. Bushnell. E. M. Sharpe. Henry M. Butzel.

[File endorsement omitted.]

[fol. 47] IN SUPREME COURT OF MICHIGAN

No. 37654

In re DETROIT INTERNATIONAL BRIDGE COMPANY, a Corporation Organized and Existing under the Laws of the State of Michigan

JUDGMENT—Filed June 29, 1934

The record and proceedings in this cause having been removed to this Court by appeal allowed by this Court issued to the Corporation Tax Appeal Board for the State of Michigan and the matters in error assigned in said petition for appeal (in the nature of a petition for a writ of certiorari) having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings the imposition of said privilege fee for the year of 1933 under Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, in so far as applied to the plaintiff does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and it further appearing to the Court that appellant, Detroit International Bridge Company, is not engaged in foreign commerce, and that the determination of the Corporation Tax Appeal Board of the privilege fees for the year 1933 was without error.

Therefore, it is ordered and adjudged that the determination of the Corporation Tax Appeal Board for the State of Michigan of the 1933 privilege tax imposed under Act No.

[fol. 48] 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, be, and the same hereby is, affirmed.

Done at Lansing, Michigan, this 29th day of June, A. D. 1934.

——— ———.

[File endorsement omitted.]

[fol. 49] IN SUPREME COURT OF MICHIGAN

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 29, 1934

To the Honorable Nelson Sharpe, Chief Justice of the Supreme Court for the State of Michigan:

Now comes Detroit International Bridge Company, plaintiff and appellant, and represents:

I

That on the 29th day of June, A. D. 1934, final judgment was duly entered in the above entitled cause by the Supreme Court for the State of Michigan, the highest court of the State of Michigan, affirming in all particulars a determination made by the Corporation Tax Appeal Board of the State of Michigan.

II

This action before the Supreme Court of the State of Michigan is in the nature of a certiorari proceeding to review the determination of the Corporation Tax Appeal Board of the State of Michigan, to which Board the plaintiff and appellant appealed from the computation of the [fol. 50] Secretary of State for the State of Michigan of the annual privilege fees for the year 1933.

III

That the Detroit International Bridge Company, plaintiff and appellant, is a corporation organized and existing under the laws of the State of Michigan, and that under

Article III of its Articles of Incorporation, as amended, the only corporate power with which the corporation was vested is as follows:

"To operate the highway bridge known as the Ambassador Bridge across the Detroit River, from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches and appurtenances thereto, and to own all or part of said bridge and approaches and appurtenances thereto.

"To maintain and operate said bridge and approaches and appurtenances thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The Detroit International Bridge Company, petitioner and appellant, has continuously since October, 1929, itself operated said bridge for vehicular and pedestrian traffic across the Detroit River from Detroit, Michigan, to Canada, and has engaged exclusively in such business.

IV

In said cause there is drawn in question the validity of a statute of the State of Michigan, on the ground of its being repugnant to the Constitution, laws or treaties of the United States, and the decision is in favor of its validity. Petitioner and appellant contended that the corporation was not subject to the payment of the annual privilege fee under Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of [fol. 51] Michigan because it was limited by the powers granted under its corporate charter to the carrying on of this business of foreign commerce and because it was engaged exclusively in foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foregin commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States. Plaintiff and appellant, Detroit International Bridge Company, claimed and contended that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan, so far as applied to it, is unconstitutional in that it is an improper interference with and regulation of foreign commerce by the State of Michigan, and

thereby violates the power of Congress, to regulate foreign commerce as provided in Article I, Section 8, Clause 3, of the Constitution of the United States. Plaintiff and appellant further contended and claimed that under said Act No. 175 of the Public Acts of 1929 that its property used exclusively in foreign commerce was exempt and should be excluded from the computation of any tax.

V

Plaintiff's and appellant's claims and contentions, that said Act contravenes Article I, Section 8, Clause 3, of the Constitution of the United States in the respects and particulars aforesaid, and as to the exclusion of property used exclusively in foreign commerce, were overruled by the Supreme Court of the State of Michigan, assignment of errors on these points having been raised in the appeal to the Supreme Court for the State of Michigan; that said question was brought and raised before the Supreme Court of the State of Michigan in the manner and form required under the practice of the said court, and which satisfied [fol. 52] all of the requirements, and the said questions were considered at length by the said Supreme Court for the State of Michigan; and that said contentions and objections of plaintiff and appellant were expressly overruled by the judgment in the opinion rendered in said Supreme Court.

VI

Your petitioner further avers that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioner, all of which more fully appear from the assignment of errors which is filed herewith.

Wherefore, petitioner prays for the allowance of an appeal from the Supreme Court for the State of Michigan, the highest court of said State, to the Supreme Court of the United States in order that the decision of the Supreme Court for the State of Michigan may be examined and reversed. It also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court for the State of Michigan, may be sent to the Supreme Court of the United States as provided by law.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

Alfred A. Cook, Thomas G. Long, Victor W. Klein, Attorneys for Petitioner and Appellant, Detroit International Bridge Company.

This is to acknowledge service of the foregoing petition.
Patrick H. O'Brien, Attorney General, by Alice E. Alexander.

[File endorsement omitted.]

[fol. 53] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER ALLOWING APPEAL

The petition of Detroit International Bridge Company for an appeal in the above cause to the Supreme Court of the United States from the supreme court of the State of Michigan, and the assignment of errors filed therewith and the record of said cause having been considered, it is

Ordered, that an appeal be, and is, allowed to the Supreme Court of the United States from the supreme court of the State of Michigan, as prayed in said petition, and that the clerk of the supreme court of the State of Michigan shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within thirty (30) days from the date hereof.

It is further ordered that said Detroit International Bridge Company shall give good and sufficient security in the sum of Five Hundred Dollars ($500.00) that said appellant shall prosecute said appeal to effect, and if said appellant fails to make good its plea, it shall answer all costs.

Nelson Sharpe, Chief Justice of the Supreme Court of Michigan.

July 2, 1934.

[fol. 53a] This is to acknowledge service of the foregoing order.

Patrick H. O'Brien, Attorney General, by —— ——,
Its ——.

[fols. 53b & 54] [File endorsement omitted.]

[fols. 55-57] Bond on Appeal for $500.00, approved July 2, 1934, omitted in printing.

[fol. 58] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 29, 1934

Now comes Detroit International Bridge Company, petitioner and plaintiff in error by Alfred A. Cook, Thomas G. Long and Victor W. Klein, its attorneys, and assigns the following errors in the record and proceedings in the said cause, to wit:

I

The Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan (Sections 10140, 10143, 10144 and 10145 of the Compiled Laws of Michigan, 1929, inclusive) is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1933 upon plaintiff, the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States [fol. 59] to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.

II

The tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No.

175 of the Public Acts of 1929, of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No. 175 of the Public Acts of 1929), but being imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign commerce, viz., an international highway toll bridge, such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3, of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act not applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

III

Under Section 5 of Act No. 85 of the Public Acts of 1921, as amended by Section 5 of Act No. 175 of the Public Acts of 1929, of the State of Michigan, it is provided that in computing the annual privilege fee imposed upon corporations that property used exclusively in foreign commerce be excluded from the computation of the tax; that even if the [fol. 60] imposition of said tax upon petitioner and plaintiff in error is proper (which we deny), the Supreme Court of the State of Michigan erred in not excluding from the computation of said tax the property of the petitioner and plaintiff in error, which is used exclusively in foreign commerce.

By reason whereof this petitioner and plaintiff in error prays that the final decision and judgment in the Supreme Court of the State of Michigan, dated the — day of June, A. D. 1934, in the above entitled cause be reversed in so far as the 1933 privilege tax be affected thereby, and other appropriate action be had in relation thereto.

Alfred A. Cook, Thomas G. Long, Victor W. Klein,
Attorneys for Petitioner and Appellant, Detroit
International Bridge Company.

Dated June 28th, 1934.

This is to acknowledge service of the foregoing assignments of error.

Patrick H. O'Brien, Attorney General, by Alice E. Alexander.

[fol. 60a] [File endorsement omitted.]

[fol. 61] IN SUPREME COURT OF MICHIGAN

[Title omitted]

STIPULATION DESIGNATING TRANSCRIPT TO BE FORWARDED BY CLERK TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed June 29, 1934

It is hereby stipulated by and between the parties, through their respective counsel, that the following portion of the record in the above entitled cause be forwarded for filing with the Clerk of the Supreme Court of the United States at Washington, D. C.:

1. The entire record before the Supreme Court of Michigan in the appeal from the Corporation Tax Appeal Board to the Supreme Court of Michigan.
2. The petition for leave to appeal to the United States of America, Supreme Court.
3. Assignments of Error.
4. Order allowing appeal to the United States Supreme Court.
5. Cost Bond.
6. Stipulation designating record to be filed with the United States Supreme Court.

Alfred A. Cook, Thomas G. Long, Victor W. Klein, Attorneys for Detroit International Bridge Company, Plaintiff in Error. Alice E. Alexander, Attorney General, Attorney for Corporation Tax Appeal Board.

Dated June 29, A. D. 1934.

[fol. 61a] [File endorsement omitted.]

[fol. 62] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 63] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS INTENDED TO BE RELIED UPON BY APPELLANT AND PARTS OF RECORD TO BE PRINTED PURSUANT TO RULE 13, SECTION 9, UNITED STATES SUPREME COURT RULES, TOGETHER WITH PROOF OF SERVICE OF SAME—Filed Aug. 15, 1934

Detroit International Bridge Company, a Michigan corporation, appellant, in pursuance to Rule 13, Section 9, Supreme Court Rules, does hereby state that in the appeal it intends to rely upon the following points of law set forth in its three Assignments of Error, to wit:

I

The Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan (Sections 10140, 10143, 10144 and 10145 of the Compiled Laws of Michigan, 1929, inclusive) is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the [fol. 64] privilege fee for the year 1933 upon plaintiff, the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.

II

The tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929, of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No. 175 of the Public Acts of 1929), but being imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign commerce, viz., an international highway toll bridge, such privilege (as

distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3, of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act not applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

III

Under Section 5 of Act No. 85 of the Public Acts of 1921, as amended by Section 5 of Act No. 175 of the Public Acts [fol. 65] of 1929, of the State of Michigan, it is provided that in computing the annual privilege fee imposed upon corporations that property used exclusively in foreign commerce be excluded from the computation of the tax; that even if the imposition of said tax upon petitioner and plaintiff in error is proper (which we deny), the Supreme Court of the State of Michigan erred in not excluding from the computation of said tax the property of the petitioner and plaintiff in error, which is used exclusively in foreign commerce.

Appellant further states that it intends to rely upon the following portions of the record, which it thinks necessary for consideration in the determination of this case on appeal:

1. The entire record before the Supreme Court of the State of Michigan in the appeal from the Corporation Tax Appeal Board to the Supreme Court of Michigan.
2. Judgment of Supreme Court of Michigan.
3. The petition of the Detroit International Bridge Company filed with the Supreme Court of Michigan for leave to appeal to the United States Supreme Court.
4. Assignments of error.
5. Order allowing appeal to the United States Supreme Court.
6. Cost Bond.
7. Stipulation filed with the Supreme Court of Michigan designating transcript to be forwarded by clerk to the Clerk of the Supreme Court of the United States.

8. This statement of points intended to be relied upon [fol. 66] and designation of the parts of the record to be printed.

Alfred A. Cook, Thomas G. Long, Victor W. Klein, Attorneys for Appellant, Detroit International Bridge Company.

Proof of Service Upon Appellee

STATE OF MICHIGAN,
County of Wayne, ss:

Victor W. Klein, being first duly sworn, deposes and says that he did on the 10th day of August, A. D. 1934, serve a true copy of the foregoing Designation of points intended to be relied upon by appellant and parts of record to be printed pursuant to Rule 13, Section 9, United States Supreme Court Rules, together with Proof of Service of same upon the Corporation Tax Appeal Board by enclosing same in an envelope addressed to each of the following: Patrick H. O'Brien, Attorney General, Lansing, Michigan, a member of the Corporation Tax Appeal Board, and Alice E. Alexander, Secretary of State's Office, Lansing, Michigan, of counsel for the appellee, registered mail, return receipt requested, and depositing said envelopes in the Post Office of the City of Detroit, Wayne County, Michigan, postage prepaid

Further deponent saith not.

Victor W. Klein.

Subscribed and sworn to before me this 10th day of August, 1934. Veronica B. Walker, Notary Public, Wayne County, Michigan. My commission expires Dec. 8, 1936.

[fol. 67] [File endorsement omitted.]

Endorsed on cover: File No. 38,900. Michigan Supreme Court. Term No. 272. Detroit International Bridge Company, Appellant, vs. Corporation Tax Appeal Board of the State of Michigan. Filed August 8, 1934. File No. 272, O. T., 1934.